MT LEGISLATIVE HISTORY

Chapter 109 1961

Bill H 97 S _____ Original bill & hist. ___C

H. Committee on Judiciary

Hearing Date(s) Jan 28 ✓C

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Date Out Jan 28 ✓C

S. Committee on Judiciary

Hearing Date(s) Feb 18 ✓C

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Feb 18 ✓C

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Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

January 28, 1961

JUDICIARY COMMITTEE

Meeting of the House Judiciary Committee was held upon adjournment of the House on Saturday, January 28, 1961. Chairman Haughey presided.

Upon roll call all members were present except Jensen of Mineral.

House Bill No. 41 was taken up. Motion was made by Dykstra that House Bill No. 41 Do Not Pass. This motion was withdrawn. Motion was then made by Blewett that we postpone action on this bill until Monday when Substitute Bill will be introduced.

House Bill No. 65 was considered. Mr. Stimatz reported that House Bill No. 65 will be considered on Monday.

House Bill No. 87 was discussed. Stimatz moved and seconded by Jensen of Lake that House Bill No. 87 Do Not Pass. Motion carried.

House Bill No. 126 was considered. After considerable discussion this bill was passed for the day.

House Bill No. 97 was taken up. Mr. Blewett stated that the Highway Patrol wants this bill as it is originally without amendments.

Motion was made by Dykstra that House Bill No. 97 Do Not Pass. Brief discussion followed. Motion was withdrawn. Motion was made by Bradford and seconded by Jensen of Lake that House Bill No. 97 Do Pass. Motion carried.

House Bill No. 98 was taken up. Blewett moved that House Bill No. 98 As Amended Do Pass. Dykstra seconded this motion. Motion carried.

House Bill No.99 was considered. Motion was made by Jensen of Lake and seconded by Keller that House Bill No. 99 Do Pass As Amended. Motion carried.

At this time Mr. Haughey announced that hearings would be held on Tuesday at 8:30 a.m. on House Bills No. 414, 415, 416 and 241.

February 18, 1961.

SENATE COMMITTEE ON JUDICIARY

The meeting of the Judiciary Committee was called to order by Chairman, Senator Mahoney, at 3:15 P. M. on February 18, 1961. The following committee members were present:

Senators: Mahoney, Dussault, Grieve, McDonnell, Harken, McKenna, Cashmore and Cumming.

Excused - McKeon

The following bills were discussed and acted upon:

H.B. #106 - Rep. Tim Sullivan (Silver Bow) was present and talked for this bill. A discussion followed and then McKenna made the motion that the bill be concurred in. Seconded by Cumming. Motion carried and so ordered.

#255 - McKenna made the motion that this bill be concurred in. McDonnell seconded this motion. Motion carried and so ordered.

#383 - Change the time for contesting a will after the probate thereof. An amendment was made. Harken made the motion that the amendment be adopted and that was seconded by McDonnell. Motion carried. Then Cumming made the motion that this bill be concurred in as amended and that was seconded by McDonnell. Motion carried and so ordered.

#97 - This bill is related to Bill #98 and 99. Supt. Alex Stephensen -Hiway Patrol and Captain Bob McKay and Captain Charles Kerr met with the committee and discussed the three of them. McKenna made the motion that Bill #97 be concurred in. Seconded by Cashmore. Motion carried and so ordered.

#98 - Cumming made the motion that this bill be concurred in. McKenna seconded the motion. Carried and so ordered.

#99 - An amendment was made and carried and then McKenna made the motion that this bill be concurred in as amended. McDonnell seconded that motion. Motion carried and so ordered. McKenna made the motion to adopt the amendment and Cashmore

Effective immediately.

Section 2. This act shall be in full force and effect from and after its passage and approval.

Approved February 28, 1961.

CHAPTER 108

An Act to Amend Section 59-538 of the Revised Codes of Montana, 1947, Relating to the Per Diem Allowance Paid to Persons in the State Service for Time Engaged in Travel; to Provide That There Shall be Paid for the Time Engaged in Travel, Eight Dollars ($8.00) Per Day for Travel Within the State and Eleven Dollars ($11.00) Per Day for Travel Outside the State.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. That section 59-538 of the Revised Codes of Montana, 1947, be, and the same is hereby amended to read as follows:

Expenses of persons in state service—per diem allowance.

"59-538. **Expenses of persons in state service—per diem allowance.** Every person engaged in any service in every department of state, inclusive of persons in appointive positions, or positions created by law, whose duties consist of full or partial time in traveling to perform any service for the state under monthly or yearly salary, or who may be sent by any authorized executive of any department of the state upon a mission in performance of any clerical work, supervisory or extension work or otherwise, of every kind and character, shall be allowed, for the time engaged in such travel, *eight dollars ($8.00)* per day for such travel within the State of Montana and *eleven dollars ($11.00)* per day for such travel outside the State of Montana; provided, that the provisions of this act shall not apply to persons holding offices specifically provided for in section 93-305, Revised Codes of Montana, 1947, or section 93-313, Revised Codes of Montana, 1947; provided that nothing herein contained shall be construed as affecting the validity of section 43-310, Revised Codes of Montana, 1947; and provided further that the provisions of this act shall not apply to the elective state public officers of the State of Montana who shall in lieu thereof be authorized actual and necessary expenses while engaged in state service away from Helena, not to exceed fifteen dollars ($15.00) per day."

Excepted state officers.

Effective immediately.

Section 2. This act shall be in full force and effect immediately upon approval.

Approved March 1, 1961.

CHAPTER 109

An Act to Amend Section 32-2142 (2) Revised Codes of Montana, 1947, as Enacted by Section 39, Chapter 263, Laws of 1955, as Amended by Section 1, Chapter 194, Laws of 1957, Relating to Persons Operating Motor Vehicles While Under the Influence of Intoxicating Liquor or of Drugs; Providing for the Use of Chemical Analysis of Blood, Urine, Breath or Other Bodily Substance to Measure Degree of Intoxication of Drivers; Providing That Milligrams of Alcohol Per One Hundred (100) Milligrams of Blood Shall be Basis of Per Cent of Alcohol in the Blood; Providing Concurrent Jurisdiction Over Violations Occurring Within the Limits of Municipalities, Pertaining, Respectively to Driving While Intoxicated; Providing for the Imposition of Fines and Penalties by Municipalities for Such Violations; Deleting That Portion of Section Which Authorizes the Board to Issue Restricted License; Repealing Section 32-2142 (1) as Enacted by Section 39, Chapter 263, Laws of 1955, as Amended by Section 3, Chapter 201, Laws of 1957 and All Acts or Parts of Acts in Conflict Herewith.

Be it enacted by the Legislative Assembly of the State of Montana:

Amending clause.

Section 1. That section 32-2142 (2) as enacted by section 39, chapter 263, laws of 1955, as amended by section 1, chapter 194, laws of 1957, be, and the same is hereby amended to read as follows:

Unlawful to drive under influence of intoxicating liquor.

"32-2142. **Persons under the influence of intoxicating liquor or of drugs.** (a) It is unlawful and punishable as provided in paragraph (d) of this section for any person who is under the influence of intoxicating liquor to drive or be in actual physical control of any motor vehicle upon the highways of this state.

Presumptions on blood analysis.

"(b) In any criminal prosecution for a violation of paragraph (a) of this section relating to driving a vehicle

while under the influence of intoxicating liquor, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, *urine, breath or other bodily substance,* shall give rise to the following presumptions:

"1. If there was at that time 0.05 per cent or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of intoxicating liquor;

"2. If there was at that time in excess of 0.05 per cent but less than 0.15 per cent by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant;

"3. If there was at that time 0.15 per cent or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor;

Basis of per cent of alcohol.

"4. *Per cent by weight of alcohol in the blood shall be based upon milligrams of alcohol per one hundred (100) milligrams of blood;*

Other evidence not excluded.

"5. The foregoing provisions of paragraph (b) shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of intoxicating liquor.

Unlawful to drive under influence of narcotic drug.

"(c) It is unlawful and punishable as provided in paragraph (d) of this section for any person who is an habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive a motor vehicle within this state. The fact that any person charged with a violation of this paragraph is or has been entitled to use such a drug under the laws of this state shall not constitute a defense against any charge of violating this paragraph.

Penalty on conviction.

"(d) Every person who is convicted of a violation of this section shall be punished by imprisonment in the county or city jail for not more than six (6) months or

by a fine of not less than one hundred dollars ($100.00) or more than five hundred dollars ($500.00) or by both such fine and imprisonment. On a second conviction he shall be punished by imprisonment in the county or city jail for not less than ten (10) days nor more than six (6) months, to which may be added, at the discretion of the court a fine of not less than three hundred dollars ($300.00) nor more than five hundred dollars ($500.00). On the third or subsequent conviction he shall be punished by imprisonment for a term of not less than thirty (30) days nor more than one (1) year, to which may be added at the discretion of the court a fine of not less than five hundred *dollars* ($500.00) nor more than one thousand dollars ($1,000.00).

Municipality authorized to adopt as ordinance.

"(e) Each and every municipality in this state is hereby given authority to enact the foregoing paragraphs (a), (b), (c) and (d) of this section, with the word 'state' in the first sentence of paragraphs (a) and (c) changed in each instance to read 'municipality,' as an ordinance, and is hereby given jurisdiction of the enforcement of said ordinance, and of the imposition of the fines and penalties therein provided.

Revocation of license on conviction.

"(f) The board shall forthwith revoke the license or permit to drive and operating privilege and any nonresident operating privilege of any person *upon receiving a record of such person's conviction or forfeiture of bail not vacated,* under this section."

Repealing clause.

Section 2. That section 32-2142 (1), as enacted by section 39, chapter 263, laws of 1955 as amended by section 3, chapter 201, laws of 1957, and all acts or parts of acts in conflict herewith are hereby repealed.

Approved March 2, 1961.

CHAPTER 110

An Act to Amend Section 31-124, Revised Codes of Montana, 1947, Relating to Definition of Suspension, Revocation and Cancellation; Providing That All Acts or Parts of Acts in Conflict Herewith Are Hereby Repealed.

Be it enacted by the Legislative Assembly of the State of Montana: